

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 91 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

JAGDISH OIL MILLS

Appearance:

Mr.B.B.Naik for MR MANISH R BHATT for Petitioner
MR SUNIL B PARIKH for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 19/03/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The following two questions have arisen
for the opinion of this Court in view of the direction
given under section 256(2) of the Income-tax Act, 1961 to

the Tribunal.

- "1. Whether the Appellate Tribunal is right in law and on facts in deleting the addition to the extent of Rs. 1,03,681/- being unpaid sales tax?
2. Whether, the Appellate Tribunal is right in law in holding that the order under section 154 cannot be considered as regular assessment and hence interest under section 215 amounting to Rs. 6230/- charged from the assessee is not valid and thereby directing the ITO to grant consequential relief ?"

2. The question no. 1 is squarely covered by the decision of this Court in CIT vs. M/s. Chandulal Venilal reported in 209 ITR, 7 which view came to be approved by the Supreme Court in Allied Motors (P) Ltd. vs. CIT, reported in 224 ITR, 677. Accordingly, if the unpaid sales tax liability was paid before the due date for filing of the return under section 139(1) of the Act, no addition could be made invoking the provisions of section 43B of the Act. The question no. 1 is therefore, answered in the affirmative against the Revenue and in favour of the assessee. As a consequence, no interest would be chargeable in view of the exclusion of the addition made on account of outstanding sales tax liability. The question no. 2 is therefore, answered in the affirmative and against the Revenue. The Reference stands disposed of accordingly with no order as to costs.

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